

* * * Effective May 4, 1989

New Bedford, MA—New Bedford Muni, LOC (BC) RWY 23, Amdt. 7

* * * Effective May 2, 1989

Albany, NY—Albany County, VOR RWY 1, Amdt. 19

[FR Doc. 89-12425 Filed 5-23-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 942

[Docket No. 90239-9039]

RIN 0648-AB50

Cordell Bank National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of National Marine Sanctuary designation; final rule; and summary of final management plan.

SUMMARY: The National Oceanic and Atmospheric Administration, by the Designation Document contained in this notice, designates an area of marine waters encompassing a total of 397.05 square nautical miles surrounding Cordell Bank, which is located approximately 50 nautical miles west-northwest of San Francisco, California, as the Cordell Bank National Marine Sanctuary. Further, NOAA by this notice issues regulations to implement the designation and regulate activities in the Sanctuary consistent with the provisions of the Designation Document. Finally, this notice summarizes the final Management Plan (MP) prepared for the Sanctuary, which details the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance, activities for the area.

EFFECTIVE DATE: Pursuant to section 304(b) of the Marine Protection, Research, and Sanctuaries Act (16 U.S.C. 1434(b)), Congress has forty-five days of continuous session beginning on the day on which this notice is published to review the designation and regulations before they take effect. After forty-five days, the designation and regulations automatically become final and take effect unless the designation or any of its terms is disapproved by

Congress through enactment of a joint resolution. A document announcing the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, OCRM, NOS, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202/673-5122). Copies of the Final Environmental Impact Statement and Management Plan (FEIS/MP) are available upon request from OCRM.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research, and Sanctuaries Act, as amended (16 U.S.C. 1431 *et seq.*) ("Act") authorizes the Secretary of Commerce to designate discrete areas of the marine environment as National Marine Sanctuaries if, as required by section 303 of the Act (16 U.S.C. 1433), the Secretary finds, in consultation with the Congress, a variety of specified officials, and other interested persons, that the designation will fulfill the purpose and policies of the Act (set forth in section 301(b) (16 U.S.C. 1431(b))) and: (1) The area proposed for designation is of special national significance due to its resource or human-use values; (2) existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; (3) designation of the area as a National Marine Sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and (4) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

Section 303 of the Act requires the Secretary to make a number of findings before he or she can designate an area as a National Marine Sanctuary. Section 304 of the Act requires the Secretary to give notice of the designation in the *Federal Register*, to take a variety of other actions including preparation of a MP for the Sanctuary and a FEIS for the designation, and to issue necessary and reasonable regulations implementing the designation.

The authority of the Secretary to designate National Marine Sanctuaries has been delegated to the Under Secretary for Oceans and Atmosphere by DOC Organization Order 10-15, § 3.01(z) (Jan. 11, 1988). The authority to administer the other provisions of the Act has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-38, Directive 05-50 (Sept. 21, 1983, as amended).

The waters surrounding Cordell Bank were nominated for designation as a National Marine Sanctuary in July 1981. On June 30, 1983, NOAA declared the area an active candidate for designation. A public scoping meeting to gather information to determine the range and significance of issues related to designation and management was held on April 25, 1984.

Cordell Bank and its surrounding waters, because of a rare combination of oceanic conditions and undersea topography, provide a highly productive marine environment in a discrete, well defined area. The prevailing California Current flows southward along the coast, while the upwelling of nutrient-rich bottom waters brings nutrients and stimulates the growth of planktonic organisms. These nutrients support the entire food chain from small crustaceans to fish, marine mammals and seabirds that form the exceptionally vigorous, ecological community flourishing at Cordell Bank. The area is being designated as a National Marine Sanctuary for the purpose of protecting and conserving the area and ensuring the continued availability of the ecological, research, educational, aesthetic, and recreational resources therein. In addition, historical or cultural resources may be present within the Cordell Bank area and its designation as a Sanctuary will protect these resources as well.

On August 28, 1987, NOAA published proposed regulations to implement the proposed designation for the Sanctuary in the *Federal Register* (52 FR 32563) and invited public comment. On the same date, NOAA issued a Draft Environmental Impact Statement (DEIS) and MP which described in detail the proposed regulatory regime and alternatives to it and, in accordance with section 304(a)(1)(C) of the Act, sent a Designation Prospectus to the Committee on Merchant Marine and Fisheries of the United States House of Representatives and the Committee on Commerce, Science and Transportation of the United States Senate for review and approval.

Public hearings to receive comments on the proposed designation and DEIS/MP were held in Bodega, California, on September 29, 1987, and in San Francisco, California, on September 30, 1987. Comments received by NOAA in response to the *Federal Register* notice and at the public hearings on the DEIS/MP were reviewed and, where appropriate, the recommendations contained therein were incorporated in the FEIS/MP. The significant comments on the proposed regulations and the

regulatory elements of the DEIS/MP and FEIS/MP and NOAA's responses to them follow:

(1) *Comment:* The majority of commentators recommended selection of the boundary option encompassing the largest area (397.05 square nautical miles) (boundary alternative number 1). These commentators felt that the area encompassed was of ecological significance and in need of protection and that the larger area would make management and protection of the Sanctuary easier.

Response: NOAA has adopted this recommendation. The larger boundary encompasses additional habitat used by marine mammals and seabirds for resting, feeding and migration. In addition, it provides a larger ecological buffer area for the unique concentration of resources found on and around Cordell Bank. The larger boundary also provides for a more easily managed area as it is contiguous to the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS).

The benthic resources, marine mammals and seabirds that are observed on and around Cordell Bank and on the adjacent continental shelf break were described in the DEIS/MP. The distribution of these organisms on, and in the area surrounding, the Bank supported designation of a smaller area (101.10 square nautical miles) (boundary alternative number 2). However, information provided to NOAA during the DEIS/MP comment period and the results of recent research demonstrates substantial use by seabirds and marine mammals of the area encompassed by boundary alternative number 1.

(2) *Comment:* A great majority of commentators recommended adoption of a regulation prohibiting all hydrocarbon exploration and development activities within the Sanctuary.

Response: This alternative was not examined in the DEIS/MP. When it was raised in comments on the DEIS/MP, the FEIS/MP did not rate it as the preferred option. While hydrocarbon exploration, development, and production activities could threaten Sanctuary resources (impacts from seismic exploration, oil discharges from accidental spills including well blow-outs, and on-site discharges of drill cuttings and drilling muds) (see FEIS/MP, Vol. I, pp. 82-91), the FEIS/MP opined that it was not necessary to prohibit all hydrocarbon exploration and development activities within the Sanctuary at this time. The United States Department of the Interior's Outer Continental Shelf (OCS) Oil and Gas 5-Year Leasing Plan, in recognition of the unlikelihood of finding

viable oil and gas reserves under Cordell Bank and the area within the 50 fathom isobath surrounding the Bank (together, the core area of the Sanctuary, consisting of approximately 18.14 square nautical miles) and the special environmental sensitivity of Cordell Bank, has deferred, until its expiration in February 1992, leasing the core area. The 5-year plan, the Sanctuary regulations, the management framework, and other Federal regulations and statutes were believed adequate to protect Sanctuary resources from being damaged from hydrocarbon exploration and development activities.

Upon publication of the FEIS/MP, NOAA received additional public comments urging that oil and gas activities be banned throughout the Sanctuary. NOAA also received a letter from EPA stating that, based on information in the FEIS, a Sanctuary-wide ban on hydrocarbon development appeared to be the environmentally preferable alternative.

Based on all the above, NOAA is: (1) By this notice of final rule banning all oil and gas activities on Cordell Bank and within the 50 fathom isobath surrounding the Bank; and (2) initiating a rule making considering expansion of the ban to the entire Sanctuary.

Initiating a rule making considering expanding the ban to the entire Sanctuary was chosen over taking regulatory action with respect thereto in this notice of final rule, because the notice proposing this rule (52 FR 32563, Aug. 28, 1987) and the DEIS/MP did not consider such a ban. A regulatory prohibition of this magnitude should not be imposed without assessing the protection to sensitive Sanctuary resources that would be afforded by such a prohibition and the effect of such a prohibition on this nation's domestic energy reserve potential and on potential lease revenues to the Treasury of the United States, and without all interested persons having notice and an opportunity to comment.

Immediately banning oil and gas activities in the core area by this notice of final rule is justified given the special environmental sensitivity of the core area and that a ban on oil and gas activities in the core area was an alternative examined in the DEIS/MP, upon which public comment was solicited.

(3) *Comment:* Several commentators recommended that a proposed ocean sewage outfall pipe from the City of Santa Rosa be prohibited because of their belief that discharges from the outfall could adversely impact the Sanctuary.

Response: The City of Santa Rosa is considering several sites for the disposal of sewage effluent. The plans of the City are in the preliminary stages and the eventual disposal site and the nature of permissible discharges have not been decided. NOAA, as manager of PRNMS, is a member of the task force set up by the California Regional Water Control Board to determine the optimal site and nature of the discharges.

No sewage can be discharged into the ocean without a permit from the United States Environmental Protection Agency (EPA) issued under the Clean Water Act (CWA). Under § 942.9 of the Cordell Bank National Marine Sanctuary regulations, since the discharge of sewage into the Sanctuary, and the discharge of sewage outside of the Sanctuary if such discharge enters the Sanctuary and injures a Sanctuary resource, are prohibited under § 942.6(a)(1), EPA permits allowing such a discharge are not valid without a NOAA certification. Thus, if necessary to protect Sanctuary resources, NOAA can impose conditions as a prerequisite of giving its certification or even deny certification.

(4) *Comment:* Many commentators recommended that anchoring on the ridges and peaks of Cordell Bank be banned to prevent damage to benthic organisms.

Response: Anchoring on the Bank can destroy or disturb many benthic organisms by physical impact of the anchor and dragging of the anchor chain. Because at present only a few vessels visit Cordell Bank and anchor on it, anchoring does not now threaten the Bank's resources. However, if anchoring activities significantly increase, there could be a significant adverse effect on the Sanctuary's benthic flora and fauna. Accordingly, Article 4 of the Designation Document has been expanded to authorize the regulation of anchoring and NOAA intends to monitor anchoring carefully. If anchoring activities increase and threaten the Bank's resources, NOAA will amend the regulations to control anchoring. If anchoring is controlled, the controls would be applicable to only Cordell Bank and the area within the 50 fathom contour (isobath) surrounding the Bank. This is the area in which the benthic resources are most concentrated and susceptible to anchor and anchor chain damage.

(5) *Comment:* Some commentators were unclear as to whether the Sanctuary regulations would apply only to Cordell Bank and the area within the 50 fathom isobath surrounding the Bank (*i.e.*, the core area of the Sanctuary).

consisting of approximately 18.14 square nautical miles) or throughout the entire Sanctuary. One commentator felt that the regulations should apply only to the core area.

Response: NOAA stated in Volume II of the FEIS that Article 4 of the Sanctuary Designation Document has been revised to eliminate ambiguities concerning the application of the Sanctuary's regulatory program. The Designation Document authorizes the regulation of five categories of activities: depositing or discharging of materials or substances; removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae; hydrocarbon (oil and gas) activities; anchoring; and removing, taking, or injuring or attempting to remove, take, or injure historical or cultural resources.

At this time, only depositing or discharging materials or substances; removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae; and hydrocarbon activities are being regulated. The prohibition against depositing or discharging applies to the entire Sanctuary. In addition, discharges or deposits beyond the boundary of the Sanctuary which enter the Sanctuary and injure its resources are prohibited. Prohibition of discharges or deposits outside of the 50 fathom isobath area is necessary to protect those pelagic or migratory resources (including seabirds and marine mammals) which occur throughout the Sanctuary.

The prohibition against the taking of benthic invertebrates or algae applies only to the core area. Prohibition within this discrete area is deemed sufficient to protect the unique benthic resources of the Sanctuary found on the submerged seamount. This prohibition does not restrict commercial or recreational fishing activities. The accidental taking of invertebrates or algae during normal fishing operations would not violate this prohibition.

The prohibition against hydrocarbon activities presently also applies only to the core area. However, as discussed under the response to comment (2), above, NOAA today is proposing a rule considering banning hydrocarbon activities throughout the entire Sanctuary.

At this time, anchoring is not being regulated. If in the future it is necessary to control anchoring in order to prevent damage to Sanctuary resources, such regulation will apply only to the core area. This area is where the benthic resources are most concentrated and potentially susceptible to anchor damage.

Also at this time, the taking of, removal of, or injury to or attempt to take, remove, or injure historical or cultural resources is not being regulated. If in the future it is necessary to impose such regulation, it would apply to the entire Sanctuary.

(6) *Comment:* One commentator stated that existing regulations made the proposed regulation prohibiting the discharge or deposit of material in the Sanctuary was unnecessary. That commentator stated that with the exception of solid wastes the discharge of materials or substances was covered adequately by existing laws and regulations.

Response: NOAA disagrees. The regulation prohibiting discharges or deposits within the Sanctuary complements the existing regulatory system, will enhance the area's overall recreational and aesthetic appeal, and will help maintain the present water quality in the Sanctuary. While numerous laws and regulations apply to the disposal of waste in the marine environment, most Federal decisions regarding whether waste may be so disposed are made on a case-by-case basis. Thus, protection of the complete Sanctuary habitat would not be certain without prohibiting discharges in an area which protects the complete Sanctuary habitat.

The CWA provides for a maximum penalty of \$10,000 for a single discharge incident without the initiation of a civil action. This does not provide sufficient deterrent for protecting important Sanctuary resources; Sanctuary regulations provide for a maximum penalty of \$50,000.

Certain gaps exist in the regulatory framework. The discharge of oil and other hazardous substances in the territorial sea is subject to EPA requirements under the CWA and United States Army Corps of Engineers requirements under the Rivers and Harbors Act (for discharges that might obstruct navigation). These statutes are not sufficient to provide comprehensive protection of a marine area and do not specifically prohibit certain activities that may harm the resources of the Sanctuary, such as the overboard disposal of trash from ships.

Beyond the territorial sea, EPA approval is needed for ocean dumping and for the placement of new ocean outfalls. EPA regulations require EPA to consider the ecological productivity and sensitivity of any area proposed for dumping or an outfall. However, such regulations do not guarantee that EPA will prohibit the disposal of waste in the Sanctuary. Specifically, the provisions of the CWA do not apply to discharges

of non-biodegradable solid wastes such as casual litter. The prohibition in the Sanctuary regulations is designed specifically to protect the area's important living resources from the effects of all harmful effluent and solid wastes. In addition, it prevents floating or submerged waste debris (e.g., non-biodegradable plastics) from being deposited in areas where animals could eat or become entangled in the debris, possibly leading to illness or death. Finally, the deposit of non-biodegradable litter reduces the aesthetic qualities of the Bank and thereby detracts from its recreational value.

(7) *Comment:* Several commentators recommended that NOAA consider provisions to increase shipping safety in the area such as the deployment of special buoys, establishment of communication systems, and redirection of vessel traffic to prevent collision that might result in spills of hazardous materials.

Response: The United States Coast Guard (USCG) has jurisdiction over shipping safety in United States waters. The USCG has determined that existing safety regulations and Traffic Separation Scheme (TSS) are adequate for the number of vessels using the ocean approaches to the port of San Francisco Bay in the area around Cordell Bank. This determination was based on an USCG Port Access Route Study and the fact that while compliance with the TSS is voluntary, virtually all traffic uses it.

The USCG has also initiated the Offshore Vessel Movement Reporting System, an advisory service, to inform mariners of the locations and movements of large vessels, such as oil tankers, in the ocean approaches to San Francisco Bay, including areas east of Cordell Bank. Participation by mariners is voluntary, but by monitoring the radio transmissions of vessels, close encounters and possible collisions between ships may be avoided. NOAA will cooperate with the USCG in enforcement and surveillance procedures that relate to shipping within Sanctuary waters.

Under international law, foreign flag vessels in waters beyond the limits of the United States territorial sea, such as those in the vicinity of Cordell Bank, cannot be regulated directly by the United States Government. Under international law, any regulation of navigation on the high seas must be endorsed by the International Maritime Organization in order for it to apply to foreign flag traffic.

Finally, NOAA has prepared a computerized National Contingency and Emergency Response Plan. The plan details alert procedures and responses and describes Sanctuary resources at risk. This plan will be expanded to include the Cordell Bank area.

(8) *Comment:* There was disagreement on the need and extent of possible regulations of fishing activities. Statements were made that overfishing already occurred and that "abnormal" fishing activities should be banned. In contrast, NOAA also received comments that asked for confirmation that commercial and recreational fishing will be excluded from the scope of Sanctuary regulations.

Response: NOAA reaffirms that no regulation of fishing, other than by existing State and Federal statutes, will occur with the designation of the Cordell Bank area as a National Marine Sanctuary. Fishing vessels, however, must comply with the Sanctuary's regulatory prohibition on discharges and, in the future, could be regulated with respect to anchoring. All State and Federal regulatory programs pertaining to fishing, including Fishery Management Plans promulgated under the Magnuson Fishery Conservation and Management Act, remain in effect.

Sanctuary wardens will enforce the California Department of Fish and Game Code (and Chapter 14 of the California Administrative Code), which regulates and manages a wide variety of activities affecting the living marine resources found in the territorial sea and in the 200-mile wide exclusive economic zone. In addition, NOAA will continue to monitor the status of fishery resources around Cordell Bank.

(9) *Comment:* Commentators requested that the regulations be revised to protect any historical or cultural artifacts that may be found within the Sanctuary.

Response: NOAA agrees that it is necessary to protect and manage any historical or cultural artifacts that may be in the Sanctuary. While the presence of any such resources on Cordell Bank or in its surrounding waters is not known, such resources could exist. Therefore, Article 4 of the Designation Document has been expanded to authorize the regulation of the taking of, removal of, or injury to or attempt to take, remove, or injure cultural or historical resources.

The Act and NOAA's National Marine Sanctuary Program Regulations (15 CFR Part 922; 53 FR 43802, Oct. 28, 1988) require that the management system for a National Marine Sanctuary be established by a Designation Document and by implementing regulations.

Activities may be regulated only to the extent authorized in the Designation Document. Under section 304(a)(4) of the Act, the Designation Document may be modified only by the same procedures by which the original designation was made. Thus, the Designation Document serves as a constitution for the Sanctuary by establishing the purpose of the Sanctuary designation; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational or aesthetic value; and the types of activities subject to regulation by the Secretary to protect those characteristics.

The Designation Document for the Cordell Bank National Marine Sanctuary follows:

Designation Document for the Cordell Bank National Marine Sanctuary

Preamble

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* (the "Act"), the Cordell Bank and its surrounding waters offshore northern California, as described in Article 2, are hereby designated as a National Marine Sanctuary for the purpose of protecting and conserving that special, discrete, highly productive marine area and ensuring the continued availability of the ecological, research, educational, aesthetic, historical, and recreational resources therein.

Article 1. Effect of Designation

The Act authorizes the promulgation of such regulations as are necessary and reasonable to protect the characteristics of the Sanctuary that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value. As used in the Act, this Designation Document, and the Sanctuary regulations, the word "historical" includes cultural, archaeological, and paleontological. Article 4 of this Designation Document lists those activities requiring regulation now or which may require regulation in the future in order to protect Sanctuary resources. Listing of an activity authorizes but does not require its regulation. Therefore, the listing of an activity does not imply that the activity will be regulated in the future. However, if an activity is not listed it cannot be regulated, except on an emergency basis for no longer than 120 days where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, without amending Article 4 to list the activity. Such an amendment can

only be accomplished by following the same procedures through which the original designation was made.

Article 2. Description of the Area

The Sanctuary consists of a 397.05 square nautical mile area encompassed by a boundary extending at 180° from the northernmost boundary of the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the PRNMS boundary and back to the northeast along this boundary to the beginning point. The precise boundaries are set forth in the regulations.

Article 3. Characteristics of the Area That Give it Particular Value

Cordell Bank is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive environment in a discrete, well-defined area. In addition, the Bank and its surrounding waters may contain historical resources of national significance. The Bank consists of a series of steep-sided ridges and narrow pinnacles rising from the edge of the continental shelf. It lies on a plateau 300-400 feet (91-122 meters) deep and ascends to within about 115 feet (35 meters) of the surface. The seasonal upwelling of nutrient-rich bottom waters to the upper levels of the Bank stimulates the growth of planktonic organisms. These nutrients, combined with high light penetration in Bank waters and wide depth ranges in the vicinity, have led to a unique association of subtidal and oceanic species. The vigorous biological community flourishing at Cordell Bank includes an exceptional assortment of algae, invertebrates, fishes, marine mammals and seabirds.

Article 4. Scope of Regulation

Section 1.—Activities Subject to Regulation

The following activities may be regulated within the Sanctuary and adjacent waters to the extent necessary and reasonable to ensure the protection of the Sanctuary's conservation, recreational, ecological, historical, research, education or aesthetic values:

- a. Depositing or discharging any material or substance;
- b. Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on the Bank or within the 50 fathom isobath surrounding the Bank;
- c. Hydrocarbon (oil and gas) activities within the Sanctuary;

d. Anchoring on the Bank or within the 50 fathom contour surrounding the Bank; and

e. Removing, taking, or injuring or attempting to remove, take, or injure historical resources located within the Sanctuary.

Section 2.—Consistency with International Law

The regulations governing activities listed in section 1 of this Article shall apply to foreign flag vessels and foreign persons only to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Section 3.—Emergency Regulations

Where necessary to prevent immediate, serious and irreversible damage to a Sanctuary resource, activities, including those not listed in section 1 of this Article, may be regulated within the limits of the Act on an emergency basis for a period not to exceed 120 days.

Article 5. Relation to Other Regulatory Programs

Section 1.—Fishing

The regulation of fishing is not authorized under Article 4. Fishing vessels, however, are subject to regulation under Article 4 with respect to discharges and deposits and anchoring. All regulatory programs pertaining to fishing, including Fishery Management Plans promulgated under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* ("Magnuson Act"), shall remain in effect. All permits, licenses, approvals, and other authorizations issued pursuant to the Magnuson Act shall be valid within the Sanctuary subject only to regulations issued pursuant to Article 4.

Section 2.—Defense Activities

The regulation of activities listed in Article 4 shall not prohibit any Department of Defense (DOD) activities that are necessary for national defense. All such activities being carried out by DOD within the Sanctuary on the effective date of designation shall be exempt from any prohibitions contained in the Sanctuary regulations. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine

exercises and vessel operations, shall be subject to all prohibitions contained in the Sanctuary regulations.

Section 3.—Other Programs

All applicable regulatory programs shall remain in effect, and all permits, licenses, approvals, and other authorizations issued pursuant to those programs shall be valid, subject only to the regulation of activities pursuant to Article 4.

Article 6. Alterations to This Designation

This designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the Pacific Fishery Management Council, review by the appropriate Congressional committees, and approval by the Secretary of Commerce or his/her designee.

[End of Designation Document]

Summary of Final Management Plan

The final MP for the Sanctuary sets forth the Sanctuary's location and provides details on the important resources and uses of the Sanctuary. The MP describes the resource protection, research, and interpretive programs and details the specific activities to be undertaken in each program. The MP includes a detailed breakdown, by program area, of agency roles and responsibilities. The Sanctuary goals and objectives as set forth in the MP are:

Resource Protection

The highest priority management goal is to protect the marine environment and resources of the Cordell Bank National Marine Sanctuary. The specific objectives of resource protection efforts are to:

- Prevent damage to the resources by promulgating regulations to protect them from the adverse effects of harmful effluents and solid wastes and from being injured, removed, or taken by divers;

- Establish cooperative agreements and other mechanisms for coordination among the agencies participating with NOAA in Sanctuary management;

- Develop an effective and coordinated program for enforcement of Sanctuary regulations;

- Promote public awareness of, and voluntary user compliance with, the regulations through an interpretive program stressing resource sensitivity and wise use; and

- Reduce threats to Sanctuary resources raised by major emergencies

through contingency and emergency-response planning.

Research

The goal of Sanctuary research activities is to improve understanding of the Cordell Bank environment and resources and to resolve specific management problems, some of which may involve resources common to both the Bank area and the nearby PRNMS. Research results will be used in interpretive programs for visitors and others interested in the Sanctuary, as well as for resource protection. Specific objectives of the research program are to:

- Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improved management of the Sanctuary;

- Initiate a monitoring program to assess environmental changes as they occur;

- Identify the range of effects on the environment that would result from predicted changes in human activity;

- Incorporate research results into the interpretive program in a format useful for the general public; and

- Encourage information exchange among all the organizations and agencies undertaking research in the Sanctuary to promote more informed management.

Interpretation

The goal of interpretive programs is to improve public awareness and understanding of the significance of the Sanctuary and the need to protect its resources. The management objectives designed to meet this goal are to:

- Provide the public with information on the Sanctuary, its goals and objectives, with an emphasis on the need to use these resources wisely to ensure their long-term viability;

- Broaden support for the Sanctuary and Sanctuary management by offering programs suited to visitors with a range of diverse interests;

- Provide for public involvement by encouraging feedback on the effectiveness of interpretive programs, collaboration with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and

- Collaborate with other organizations to provide interpretive services complementary to the Sanctuary program.

Visitor Use

The Sanctuary goal of visitor management is to encourage commercial and recreational use of the Sanctuary compatible with the primary goal of resource protection. Specific management objectives are to:

—Provide relevant information about Sanctuary regulations, use policies and standards;

—Collaborate with public and private organizations in promoting compatible use of the Sanctuary by exchanging information concerning the commercial and recreational potential of the Sanctuary; and

—Assess the current levels of use and monitor use over time to identify and control potential degradation of resources and minimize potential user conflicts.

Summary of Regulations

The regulations prohibit a relatively narrow range of activities, establish procedures for issuing permits to conduct otherwise prohibited activities for a narrow range of purposes, and set forth the maximum per day penalty for conducting a prohibited activity without a permit.

Specifically, the regulations add a new Part 942 to title 15, Code of Federal Regulations.

Section 942.1 sets forth the statutory authority for the designation of the Sanctuary and for the issuance of the regulations.

Section 942.2 sets forth as the purpose for designating the Sanctuary: protecting and conserving the highly productive area of Cordell Bank and its surrounding waters and ensuring the continued availability of the ecological, research, educational, aesthetic, historical and recreational resources therein.

Section 943.3 and Appendix I following § 942.10 set forth the boundaries of the Sanctuary.

Section 943.4 defines various terms used in the regulations. "Person" is defined to mean any private individual, partnership, corporation, or other entity; or any officer, employee, agent, agency, department or instrumentality of the Federal government, any state or local government, or any foreign government. "Sanctuary" is defined to mean the Cordell Bank National Marine Sanctuary. "Injure" is defined to mean to change adversely, either in the long- or short-term, a chemical or physical quality or the viability of a Sanctuary resource. "Sanctuary resource" is defined to mean a living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical,

research, educational, or aesthetic value. Other terms appearing in the regulations are defined at 15 CFR 922.2.

Section 942.6 prohibits three types of activities and thus makes it unlawful for any person to conduct them. However, any of those activities could be conducted lawfully if necessary for national defense; if necessary to respond to an emergency threatening life, property, or the environment; or pursuant to a permit or certification issued under § 942.8 or § 942.9 by the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA.

The first type of activity prohibited is depositing or discharging from any location within the boundaries of the Sanctuary materials or substances of any kind, except for fish, fish parts and chumming materials (bait) produced and discarded during routine fishing activities conducted in the Sanctuary and water (including cooling water) and other biodegradable effluents, specified in § 942.6(a)(1)(i)(B). Depositing or discharging, from any location beyond the boundaries of the Sanctuary, materials or substances of any kind except for the exclusions discussed above is also prohibited if such deposit or discharge enters the Sanctuary and injures a Sanctuary resource.

The second type of activity prohibited is attempting to remove, take, or injure or removing, taking, or injuring benthic invertebrates or algae located on Cordell Bank or within the 50 fathom isobath surrounding the Bank. Section 942.5 allows all activities to be conducted in the Sanctuary (subject to all other prohibitions, restrictions, or conditions imposed under any other program) except for those activities prohibited in § 942.6.

The third type of activity prohibited is oil and gas activities on the Bank or within the 50 fathom isobath surrounding the Bank.

Section 942.7 sets forth the maximum statutory civil penalty per day for conducting a prohibited activity—\$50,000. Each day of a continuing violation constitutes a separate violation. Further, *in rem* actions against any vessel used in conducting a prohibited activity are statutorily authorized. Regulations setting forth the administrative procedures governing the assessment of civil penalties, enforcement hearings and appeals, permit sanctions and denials for enforcement reasons, and the issuance of written warnings appear at Part 904, Title 15, Code of Federal Regulations.

Section 942.8 sets forth the procedures for applying for a permit to conduct an otherwise prohibited activity in the

Sanctuary and the criteria governing the issuance or denial of such permits. Permits are granted by the Assistant Administrator for Ocean Services and Coastal Zone Management if he or she finds that the activity will further research related to Sanctuary resources, further the educational or historical value of the Sanctuary, further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty, or assist in the management of the Sanctuary. In deciding whether to issue a permit, the Assistant Administrator may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity, the extent to which the conduct of the activity may diminish or enhance the values for which the Sanctuary was designated, and the end value of the applicant's overall activity.

Section 942.9 states that all permits, licenses, approvals, and other authorizations issued pursuant to any authority are valid within the Sanctuary subject only to the prohibitions set forth in § 942.6. Other authorizations allowing the discharge or deposit of materials or substances otherwise prohibited under § 942.6(a)(1), or the removal, taking, or injury of, or attempt to remove, take, or injure benthic invertebrates or algae otherwise prohibited under § 942.6(a)(2), are valid if certified by the Assistant Administrator as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. The certification may impose terms and conditions to ensure consistency.

Section 942.10 sets forth the procedures governing appeals of the grant, denial, conditioning amendment, suspension or revocation of permits by the Assistant Administrator.

Additional Information

Executive Order 12291

NOAA has concluded that these regulations are not "major rules" within Section 1(b) of Executive Order 12291 because they will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or,
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to

compete with foreign-based enterprises in domestic or export markets.

These regulations prohibit only a narrow range of activities in a relatively small portion of the seas. These regulations also (1) establish procedures whereby permits to conduct an otherwise prohibited activity could be applied for and obtained for a narrow range purposes, and (2) set forth the maximum per day penalty for conducting a prohibited activity. Thus, these regulations will have little or no direct or indirect economic impact and no adverse direct or indirect environmental effects.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when these regulations were proposed that if they were adopted as proposed they would not have a significant economic impact on a substantial number of small entities. While the proposed regulations were changed to prohibit hydrocarbon activities in the core area, there are no hydrocarbon activities ongoing or planned in that area. Given that the core area is only approximately 18.4 square nautical miles, that the Bank itself does not appear to be an area of high oil reserves, that the Bank would be difficult to drill due to its granite composition, and that the core area is of special environmental sensitivity, it is unlikely the Department of the Interior would ever lease any part of the core area for hydrocarbon exploration or development. The possibility of the core area being leased and all the requisite permits, licenses, and approvals being obtained is too remote upon which to base a conclusion that the prohibition on hydrocarbon activities in the core area would have a significant economic effect on a substantial number of small entities. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

These regulations contain a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. No. 96-511) approved by the Office of Management and Budget under Control Number 0648-0141. Public reporting burden for the collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden

estimate or any other aspect of the collection of information, including suggestions for reducing this burden to: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, OCRM, NOS, NOAA, 1825 Connecticut Ave., NW., Washington DC 20235, and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (0648-0141), Office of Management and Budget, Washington DC 20530.

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370(a)), a DEIS was prepared for the designation and the proposed regulations. As required by section 304(a)(2) of the Act, the DEIS included the resource assessment report required by section 303(b)(3) of the Act, maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area. The DEIS was made available for public review on August 28, 1987, with comments due on October 12, 1987. Public hearings to receive comments on the proposed designation were held in Bodega, California, on September 29, 1987, and in San Francisco, California, on September 30, 1987. All comments were reviewed and, where appropriate, were incorporated into the FEIS and these regulations.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

Executive Order 12630

This rule does not have takings implications sufficient to require preparation of a Takings Implications Assessment under Executive Order 12630.

List of Subjects in 15 CFR Part 942

Administrative practice and procedure, Environmental protection, Marine resources, National resources.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 19, 1989.

John J. Carey,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth in the preamble, 15 CFR is amended as follows:

1. Part 942 is added to read as follows:

PART 942—CORDELL BANK NATIONAL MARINE SANCTUARY

Sec.

- 942.1 Authority.
- 942.2 Purpose.
- 942.3 Boundary.
- 942.4 Definitions.
- 942.5 Allowed activities.
- 942.6 Prohibited activities.
- 942.7 Penalties.
- 942.8 Permit applications—procedures and criteria.
- 942.9 Certification of other authorizations.
- 942.10 Appeals of administrative action.

Appendix I to Part 942—Cordell Bank National Marine Sanctuary Boundary Coordinates.

Authority: Sections 303, 304, 305, and 307 of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

§ 942.1 Authority.

The Sanctuary has been designated by the designee of the Secretary of Commerce pursuant to the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* ("Act"). The regulations in this part are issued pursuant to the authority of sections 303, 304, 305, and 307 of the Act.

§ 942.2 Purpose.

The purpose of designating the Sanctuary is to protect and conserve the special, discrete, highly productive marine area of Cordell Bank and its surrounding waters and to ensure the continued availability of the ecological, research, educational, aesthetic, historical and recreational resources therein.

§ 942.3 Boundary.

The Sanctuary consists of an area of marine waters approximately 50 miles west-northwest of San Francisco, California. The Sanctuary consists of a 397.05 square nautical mile area extending at 180° from the northernmost boundary of the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the PRNMS boundary and back to the northwest along this boundary to the beginning point. The boundary coordinates are listed in Appendix I following § 942.10.

§ 942.4 Definitions.

(a) "Act" means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

(b) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration

(NOAA), U.S. Department of Commerce, or designee.

(c) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, NOAA, or designee.

(d) "Injure" means to change adversely, either in the long- or short-term, a chemical or physical quality of, or the viability of, a Sanctuary resource.

(e) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, any state or local government, or any foreign government.

(f) "Sanctuary" means the Cordell Bank National Marine Sanctuary.

(g) "Sanctuary resource" means a living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational, or aesthetic value. Other terms appearing in these regulations are defined in 15 CFR 922.2.

§ 942.5 Allowed activities.

All activities except those prohibited by § 942.6 may be conducted within the Sanctuary subject to all other prohibitions, restrictions, and conditions imposed by any other authority.

§ 942.6 Prohibited activities.

(a) Except as necessary for national defense, as necessary to respond to an emergency threatening life, property or the environment, or as permitted or certified by the Assistant Administrator in accordance with §§ 942.8 and 942.9, the following activities are prohibited and thus unlawful for any person to conduct:

(1) *Depositing or discharging materials or substances.* (i) Depositing or discharging, from any location within the boundaries of the Sanctuary, materials or substances of any kind except:

(A) Fish, fish parts and chumming materials (bait) produced and discarded during routine fishing activities conducted in the Sanctuary; and

(B) Water (including cooling water) and other biodegradable effluents incidental to use of a vessel in the Sanctuary and generated by: Marine sanitation devices approved by the United States Coast Guard; routine vessel maintenance, e.g., deck wash down; engine exhaust; or meals on board vessels.

(ii) Depositing or discharging, from any location beyond the boundaries of the Sanctuary, materials or substances of any kind, except for the exclusions

listed in paragraph (a)(1)(i) of this section, which enter the Sanctuary and injure a Sanctuary resource.

(2) *Removing, taking, or injuring sanctuary resources.* Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank or within the 50 fathom isobath surrounding the Bank. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person. This prohibition does not apply to accidental removal, injury, or takings during normal fishing operations.

(3) *Hydrocarbon (oil and gas) activities.* Hydrocarbon (oil and gas) exploration, development, and production activities on Cordell Bank or within the 50 fathom isobath surrounding the Bank.

(b) All activities being carried out by the Department of Defense (DOD) within the Sanctuary on the effective date of designation that are necessary for national defense are exempt from the prohibitions contained in these regulations. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted by the Assistant Administrator after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, are subject to all prohibitions contained in these regulations.

(c) The prohibitions in this section are applicable to foreign persons and foreign flag vessels only to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other international agreements to which the United States is a party.

(d) Where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, any activity may be regulated within the limits of the Act on an emergency basis for no more than 120 days.

§ 942.7 Penalties.

(a) Section 307(c) of the Act authorizes the assessment of a civil penalty of not more than \$50,000 for each violation of the Act or any regulation or permit issued pursuant to the Act. Each day of a continuing violation constitutes a separate violation. Section 307(c)(3) further authorizes a proceeding *in rem* against any vessel used in such violation and for which a civil penalty has been assessed.

(b) Regulations setting forth the administrative procedures governing the assessment of civil penalties,

enforcement hearings and appeals, permit sanctions and denials for enforcement reasons, and the issuance of written warnings appear at 15 CFR Part 904.

§ 942.8 Permit applications—procedures and criteria.

(a) If a person wishes to conduct an activity prohibited under § 942.6, that person must apply for, receive, and have in possession on board any vessel used a valid permit issued pursuant to this part authorizing that person to conduct that activity.

(b) Permit applications shall be addressed to the Assistant Administrator, Ocean Services and Coastal Zone Management; ATTN: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Washington, DC 20235. An application shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required permits, licenses, approvals, and other authorizations shall be attached.

(c) Upon receipt of a complete application, the Assistant Administrator may seek the views of any person, within or outside the Federal Government, and may hold a public hearing, at his or her discretion.

(d) The Assistant Administrator, at his or her discretion, may issue a permit subject to such terms and conditions as deemed appropriate, to conduct an activity otherwise prohibited by § 942.6, if the Assistant Administrator finds that the activity will further research related to Sanctuary resources; further the educational or historical value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in the management of the Sanctuary. In deciding whether to issue a permit, the Assistant Administrator may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance the values for which the Sanctuary was designated; and the end value of the applicant's overall activity.

(e) A permit issued pursuant to this section is nontransferable.

(f) The Assistant Administrator may amend, suspend or revoke a permit issued pursuant to this subsection, in whole or in part, if the Assistant Administrator determines that the permittee has acted in violation of the terms or conditions of the permit or of these regulations or that other good cause exists for amending, suspending or revoking the permit. Any such action shall be communicated in writing to the permittee, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

§ 942.9 Certification of other authorizations.

(a) All permits, licenses, approvals, and other authorizations issued pursuant to any authority are valid within the Sanctuary subject only to the prohibitions set forth in § 942.6. All applicable regulatory programs remain in effect.

(b) A permit, license, approval, or other authorization allowing the discharge or deposit of materials or substances otherwise prohibited under § 942.6(a)(1), or the removal, taking, or injury of, or attempt to remove, take, or injure benthic invertebrates or algae otherwise prohibited under § 942.6(a)(2) shall be valid if certified by the Assistant Administrator as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(c) In considering whether to make the certifications called for in this section, the Assistant Administrator may seek and consider the views of any other person, within or outside the Federal government, and may hold a public hearing as deemed appropriate.

(d) Any certification called for in this section shall be presumed unless the Assistant Administrator acts to deny or condition the certification within 60 days from the date that the Assistant Administrator receives notice of the permit, license, approval, or other authorization, and the supporting data deemed necessary by the Assistant Administrator in order to make a decision on the certification.

(e) The Assistant Administrator may amend, suspend, or revoke any certification made under this section whenever the continued conduct of the activity would violate any terms or conditions of the certification. Any such action shall be communicated in writing to both the holder of the certified permit,

license, approval, or other authorization and the issuing agency and shall set forth reason(s) for the action taken.

(f) Either the holder or the issuing agency may appeal any action conditioning, denying, amending, suspending, or revoking any certification in accordance with the procedure provided for in § 942.10.

§ 942.10 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons and therefore covered by the procedures at Subpart D of 15 CFR Part 904, an applicant for a permit, a permittee, or any other interested person (hereinafter appellant) may appeal the grant, denial, conditioning, amendment, suspension, or revocation of any permit under § 942.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed and the reason(s) therefor, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Administrator, in his or her discretion, may hold an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator may request the appellant, the permit applicant or permittee, if other than the appellant, or any person, within or outside the Federal government, to submit such information as the Administrator may deem appropriate in order to decide the appeal. The Administrator shall decide the appeal based on the record before the Assistant Administrator and the record of the appeal. The Administrator shall notify the appellant and other interested persons of the final decision and the reason(s) therefor in writing, normally within 30 days of the date of the receipt of adequate information to make the decision.

(c) If the Administrator determines that an informal hearing should be held, the Administrator may designate an officer before whom the hearing shall be held. Notice of the time, place, and subject matter of the hearing shall be published in the *Federal Register*. Such hearing shall be held no later than 30 days following publication of the notice in the *Federal Register*, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant or permittee and other interested persons may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the conclusion of the hearing, the hearing officer shall

recommend a decision in writing to the Administrator.

(d) The Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify the appellant and other interested persons of his/her decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended by the Administrator for good cause for a period not to exceed 30 days, either upon his/her own motion or upon written request from the appellant, permit applicant or permittee, stating the reason(s) therefor.

Appendix I to Part 942: Cordell Bank National Marine Sanctuary Boundary Coordinates

Point No.	Latitude	Longitude
1.....	38°15'51.72"	123°10'52.44"
2.....	38°07'55.88"	123°38'33.53"
3.....	38°06'45.21"	123°38'00.40"
4.....	38°04'58.41"	123°37'14.34"
5.....	38°04'28.22"	123°37'17.83"
6.....	38°03'42.75"	123°36'55.66"
7.....	38°03'11.10"	123°36'19.78"
8.....	38°02'46.12"	123°36'21.98"
9.....	38°02'02.74"	123°35'56.56"
10.....	38°01'27.10"	123°35'55.12"
11.....	38°01'22.28"	123°36'55.13"
12.....	38°01'11.54"	123°37'28.21"
13.....	38°00'49.16"	123°37'29.77"
14.....	37°59'54.49"	123°36'47.90"
15.....	37°59'12.39"	123°35'59.55"
16.....	37°58'39.40"	123°35'14.85"
17.....	37°58'00.57"	123°34'42.93"
18.....	37°57'18.99"	123°33'43.15"
19.....	37°56'56.42"	123°32'51.97"
20.....	37°56'18.90"	123°32'49.24"
21.....	37°55'22.37"	123°32'36.96"
22.....	37°54'26.10"	123°32'21.73"
23.....	37°53'07.46"	123°31'46.81"
24.....	37°52'34.93"	123°31'18.90"
25.....	37°51'42.81"	123°31'19.10"
26.....	37°50'59.58"	123°31'02.96"
27.....	37°48'49.14"	123°28'44.61"
28.....	37°49'22.64"	123°29'34.07"
29.....	37°48'49.14"	123°28'44.61"
30.....	37°48'36.95"	123°28'08.29"
31.....	37°48'03.37"	123°28'23.27"
32.....	37°47'41.54"	123°28'01.97"
33.....	37°47'01.78"	123°27'16.78"
34.....	37°46'51.92"	123°26'48.98"
35.....	37°46'13.20"	123°26'04.79"
36.....	37°46'00.73"	123°25'36.99"
37.....	37°50'25.31"	123°25'26.53"
38.....	37°54'32.28"	123°23'16.49"
39.....	37°57'45.71"	123°19'17.72"
40.....	37°59'29.27"	123°14'12.16"
41.....	37°59'43.71"	123°08'27.55"
42.....	38°03'10.20"	123°07'44.35"
43.....	38°04'01.64"	123°06'58.92"
44.....	38°08'33.32"	123°04'56.24"
45.....	38°12'42.06"	123°07'10.21"

[FR Doc. 89-12450 Filed 5-23-89; 8:45 am]

BILLING CODE 3510-08-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5 and 31

Fees for Exchange Rule Enforcement and Financial Reviews, Applications for Contract Market Designation, Audits of Leverage Transaction Merchants, and Leverage Commodity Registration

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission periodically adjusts fees charged for certain program services to assure that they accurately reflect current Commission costs. In this regard, the staff recently reviewed the Commission's actual costs for exchange rule enforcement and financial reviews (17 CFR Part 1, Appendix B), applications for contract market designation (17 CFR Part 5, Appendix B), audits of leverage transaction merchants (17 CFR Part 31, Appendix B) and leverage commodity registration (17 CFR Part 31, Appendix A). The following fee schedule for FY 1989 reflects the costs to the Commission of providing those services during fiscal years 1986, 1987 and 1988. Accordingly, the fee for applications for contract market designation will remain at \$16,000, the fee for leverage commodity registration will remain at \$4,500, and a new schedule of fees is being issued for exchange rule enforcement and financial reviews and audits of leverage transaction merchants.

EFFECTIVE DATE: August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone number 202-254-6090.

SUPPLEMENTARY INFORMATION: The Commission periodically reviews the actual costs of providing services for which fees are charged and adjusts its fees accordingly. In connection with its most recent review, the Commission has determined that fees for exchange rule enforcement and financial reviews and audits of leverage transaction merchants should be adjusted.

I. Computation of Fees

In accordance with the Futures Trading Act of 1982 (7 U.S.C. 16a) the Commission has established fees for certain activities and functions

performed by the Commission.¹ In calculating the actual cost of conducting exchange rule enforcement and financial reviews, processing applications for contract market designation, performing audits of leverage transaction merchants and registering leverage commodities, the Commission takes into account personnel costs, benefits and administrative costs.

The Commission first determines personnel costs by extracting data from the agency's Budget Account Code (BAC) system. Employees of the Commission record the time spent on each project under the BAC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A-76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and in the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for the preceding fiscal years is as follows: FY 1986—104%; FY 1987—101%; FY 1988—100%.

Once the total personnel costs and overhead for each project have been determined, the costs for FY 1986, FY 1987 and FY 1988 are averaged. This results in a calculation of the average annual cost for each project over the three-year period, which is the basis for the fee.

II. Exchange Rule Enforcement and Financial Reviews

On December 4, 1987, the Commission published a final rule which provides that the annual fee for rule enforcement and financial reviews for each exchange should be calculated by computing the average annual cost of reviewing that exchange over the preceding three fiscal years, then multiplying that amount by 65% and rounding to the nearest multiple of \$100. (See 52 FR 46070). As a result of applying this formula, the Commission has established the following exchange rule enforcement and financial review fees for FY 1989 which are due 90 days after publication of this notice.

¹ For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

Exchange	Actual average costs FY 1986-FY 1988	FY 1989 fee
Chicago Board of Trade.....	\$252,315	\$164,000
Chicago Mercantile Exchange.....	251,153	163,200
Commodity Exchange, Inc.	117,790	76,600
Coffee, Sugar & Cocoa Exchange.....	65,200	42,400
New York Mercantile Exchange.....	103,690	67,400
New York Cotton Exchange.....	87,144	56,600
Kansas City Board of Trade.....	64,226	41,700
New York Futures Exchange.....	66,777	43,400
Minneapolis Grain Exchange.....	40,335	26,200
Philadelphia Board of Trade.....	4,983	3,200
Amex Commodities Corp.	1,691	1,100
Total.....	1,055,304	685,800

As in the calculation of the FY 1987 and FY 1988 fees, the FY 1989 fee for the Chicago Board of Trade includes the fees for the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange.

III. Applications for Contract Market Designation

A review of actual costs of processing applications for contract market designation for FY 1986, FY 1987 and FY 1988 revealed that the average costs for review of an application for contract market designation over the three year period was \$16,213. Therefore, the fee for applications for contract market designation will remain \$16,000, in accordance with the formula in the Commission's regulations (17 CFR Part 5, Appendix B).

IV. Audits of Leverage Transaction Merchants

On June 14, 1988, the Commission published a final rule which provides that the annual fee for audits of a leverage transaction merchant should be calculated by computing the average annual costs of reviewing that registered leverage transaction merchant over the preceding three fiscal years, then multiplying that amount by 65% and rounding to the nearest multiple of \$100. (See 53 FR 22138). As a result of applying this formula, the Commission has established the following fees for audits of leverage transaction merchants for FY 1989 which are due 90 days after publication of this notice.

Leverage transaction merchant	Actual average costs FY 1986-FY 1988	FY 1989 fee
First Asset Corp.	\$14,116	\$9,200
Monex International Ltd.....	44,299	28,800

Leverage transaction merchant	Actual average costs FY 1986-FY 1988	FY 1989 fee
International Precious Metals Corp.....	37,238	24,200
Total	95,653	62,200

V. Leverage Commodity Registration

No new applications for leverage commodity registration were received by the Commission in FY 1988. Accordingly, the Commission will maintain the present fee of \$4,500 for leverage commodity registration.

VI. Regulatory Flexibility

The fees implemented in this release affect contract markets (also referred to as "exchanges") and leverage transaction merchants. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Leverage transaction merchants also are not considered "small entities" by the Commission because of the minimum financial requirements for registration. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or leverage transaction merchants. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on May 18, 1989, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-12410 Filed 5-23-89; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231, 241 and 271

[Release Nos. 33-6835; 34-26831; IC-16961; FR-36]

Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures

AGENCY: Securities and Exchange Commission.

ACTION: Interpretive release.

SUMMARY: The Commission today announced the publication of an interpretive release regarding the disclosure required by Item 303 of

Regulation S-K, Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A"). In addition to reporting the results of the first two phases of a continuing review project (the "MD&A Project" or the "Project") undertaken by the staff of the Division of Corporation Finance (the "Division"), the release sets forth the Commission's views regarding several disclosure matters that should be considered by registrants in preparing MD&As. Additionally, in discussing appropriate MD&A disclosure as to participation in high yield, highly leveraged or non-investment grade loans and investments, the release also sets forth the position of the Commission concerning disclosures by investment companies which invest in, or are permitted to invest in, securities issued in highly leveraged transactions, even though investment companies are not subject to MD&A disclosure requirements.

DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about specific filings should be directed to the staff members responsible for reviewing the documents the registrant files with the Commission. General questions about the release or the MD&A Project should be referred to Howard F. Morin, Assistant Director, at (202) 272-3203, Paul N. Edwards, Special Counsel, at (202) 272-3205, or Emanuel D. Strauss, Attorney-Adviser, Office of Chief Counsel, at (202) 272-2573, each of the Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Questions about Investment Company Act issues should be referred to Carolyn Lewis, Assistant Director, Division of Investment Management, at (202) 272-2102.

SUPPLEMENTARY INFORMATION: In response to comments received on a concept release issued in 1987 (the "Concept Release"),¹ the Commission undertook the MD&A Project, a special review of the adequacy of MD&A disclosures provided by registrants. Based on the results of the first two phases of the staff's continuing Project, the Commission has concluded that further guidance should be given to registrants to improve overall compliance with the MD&A disclosure requirements.

¹ Securities Act Release No. 6711 (April 24, 1987) [52 FR 13715].

I. Background

The current framework of MD&A was adopted in 1980,² although the origins of the MD&A requirements date to 1968.³ MD&A requires a discussion of liquidity, capital resources, results of operations, and other information necessary to an understanding of a registrant's financial condition, changes in financial condition and results of operations.⁴ While the MD&A requirements adopted in 1980 are far more comprehensive than earlier formulations, they are intentionally general, reflecting the Commission's view that a flexible approach elicits more meaningful disclosure and avoids boilerplate discussions, which a more specific approach could foster. One year after adoption of the current framework, the Commission published a release that included examples of MD&A disclosure to assist registrants.⁵

In 1986, Coopers & Lybrand submitted to the Commission's Office of the Chief Accountant a proposal recommending increased MD&A disclosure of business risks and the performance by the independent auditor of specified review procedures with respect to these disclosures. Shortly thereafter, the managing partners of seven accounting firms⁶ issued a white paper entitled "The Future Relevance, Reliability, and Credibility of Financial Information: Recommendations to the AICPA Board of Directors," which also called for increased risk disclosure, but contemplated that such disclosure would be separate from MD&A and would be subjected to audit coverage.

The Commission thereafter issued the Concept Release requesting comments concerning the adequacy of the MD&A requirements and the costs and benefits of the revisions suggested by the proposals.⁷ Virtually all the 196

² Securities Act Release No. 6231 (September 2, 1980) [45 FR 63630].

³ Securities Act Release No. 4936 (December 9, 1968) [33 FR 18617]; Securities Act Release No. 5520 (August 14, 1974) [39 FR 31894]. See also Securities Act Release No. 6711, *supra* n. 1, for a more detailed summary of the origins of the MD&A requirements.

⁴ 17 CFR 229.303(a).

⁵ Securities Act Release No. 6349 (September 28, 1981), 23 SEC Docket 962 [not published in the Federal Register]; see also Securities Act Release No. 6791 (August 1, 1988) [53 FR 29226].

⁶ Arthur Andersen & Co.; Arthur Young; Coopers & Lybrand; Deloitte Haskins & Sells; Ernst & Whinney; Peat, Marwick, Mitchell & Co.; and Touche Ross & Co.

⁷ Securities Act Release No. 6711, *supra* n. 1. In the Concept Release, the Commission indicated that much of the business risk disclosure recommended in the Coopers & Lybrand proposal is required by current rules, although not necessarily by MD&A.